BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

EDDIE ROGERS)
Claimant)
VS.)
) Docket No. 1,003,955
FARMERS COOPERATIVE)
Respondent)
AND)
)
NATIONWIDE AGRIBUSINESS INS. CO.)
Insurance Carrier)

ORDER

Respondent appeals the October 7, 2002 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was awarded benefits in the form of medical treatment and temporary total disability compensation for the injury to his left shoulder. The Administrative Law Judge found that claimant's left upper extremity condition occurred as the result of overuse while recovering from two surgeries to his right shoulder.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment to his left shoulder?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be affirmed.

Claimant contends that he suffered an injury to his left shoulder from overuse while compensating for his inability to use his right upper extremity after two right shoulder surgeries. Respondent contends that claimant's very limited activities with his left upper extremity would not be sufficient to create the type of injury diagnosed by Edward J. Prostic, M.D., in his medical examination of July 30, 2002. It is acknowledged that claimant was involved in very little physical activity with his left upper extremity. Nevertheless, the

causation opinion of Dr. Prostic is the only opinion before the Board at this time. The Board notes that claimant's medical records from orthopedic surgeon Michael T. McCoy, M.D., from September and November of 2001 show no limitation to the left arm. However, the report of Dr. Prostic is some eight to ten months later. Dr. Prostic's opinion is that claimant developed possible rotator cuff disease from overuse of the left upper extremity while compensating for the right. This opinion is uncontradicted in July 2002.

Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy.¹

The Board, therefore, finds for preliminary hearing purposes that claimant's left upper extremity problems developed as the result of overcompensating for his limited use of his right upper extremity following two shoulder surgeries. Therefore, the Order of the Administrative Law Judge granting claimant medical treatment and temporary benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated October 7, 2002, should be, and is hereby, affirmed.

IT	IS	SO	OR	RDEI	RED.

Dated tills day of December 200	⁻ 2002	ecember	∕ ot L	da	this	Dated
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BOARD MEMBER

c: John J. Bryan, Attorney for Claimant Jeffrey E. King, Attorney for Respondent Bryce D. Benedict, Administrative Law Judge Director, Division of Workers Compensation

¹ Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).